



April 1, 2009

ENGROSSED HOUSE BILL No. 1374

DIGEST OF HB 1374 (Updated March 26, 2009 1:48 pm - DI 110)

Citations Affected: IC 27-7.

Synopsis: Escrow transactions. Provides that funds received in connection with an escrow transaction in a real estate transaction must be deposited in an escrow account unless the parties to the escrow transaction agree in writing to another arrangement. Prohibits a closing agent from making disbursements from an escrow account in connection with a real estate transaction unless any funds that: (1) are received from a single party to the transaction; and (2) in the aggregate are at least \$10,000; are wired funds that are unconditionally held by and irrevocably credited to the closing agent's escrow account. Sets forth certain types of instruments and other forms of money that constitute "good funds" for purposes of an escrow transaction. Prohibits a closing agent from making disbursements from an escrow account in connection with a real estate transaction unless any funds that: (1) are received from a single party to the transaction; and (2) in the aggregate are less than \$10,000; are good funds. Provides that if: (1) the closing agent in a real estate transaction receives wired funds unconditionally held and irrevocably credited to the closing agent's escrow account; and (2) a holder of a mortgage lien so requests; the lien holder is entitled to receive its proceeds from the real estate transaction through funds electronically transferred to an account specified by the holder. Provides that a closing agent may advance up to \$500 from an escrow account on behalf of a party to an escrow transaction for the purpose of paying certain incidental fees in connection with the real property that is the subject of the escrow transaction.

Effective: July 1, 2009.

Murphy, Bardon, Messmer

(SENATE SPONSORS — PAUL, NUGENT, TAYLOR)

January 13, 2009, read first time and referred to Committee on Financial Institutions.
January 26, 2009, amended, reported — Do Pass.
February 3, 2009, read second time, ordered engrossed. Engrossed.
February 12, 2009, read third time, passed. Yeas 93, nays 0.

SENATE ACTION

February 19, 2009, read first time and referred to Committee on Insurance and Financial Institutions.
March 31, 2009, amended, reported favorably — Do Pass.

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April 1, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1374

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-7-3.7 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]:

4 **Chapter 3.7. Escrow Transactions in Real Estate Transactions**

5 **Sec. 1. (a) As used in this chapter, "closing agent" means a**
6 **person that closes an escrow transaction in connection with the**
7 **purchase, sale, or financing of an interest in real estate.**

8 **(b) The term does not include a lender or an employee of a**
9 **lender that conducts a settlement or closing of a real estate secured**
10 **loan provided by the lender in the office of the lender.**

11 **Sec. 2. As used in this chapter, "escrow account" means a**
12 **checking account established by a closing agent with a:**

- 13 (1) bank;
14 (2) savings and loan association;
15 (3) credit union; or
16 (4) savings bank;

17 **that is chartered under the laws of a state or the United States and**

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used exclusively for the deposit and disbursement of funds for an escrow transaction.

Sec. 3. (a) As used in this chapter, "escrow transaction" means a transaction in which a person deposits with a closing agent funds that are to be held until:

- (1) a specified event occurs; or**
 - (2) the performance of a prescribed condition;**
- in connection with the purchase, sale, or financing of an interest in real estate.**

(b) The term does not include a loan financing if:

- (1) the only parties to the loan transaction are the lender and the borrower; and**
- (2) the lender is responsible for disbursing all of the funds to the borrower or to a third party in order to pay fees and charges associated with the loan transaction.**

Sec. 4. As used in this chapter, "good funds" means funds in any of the following forms:

- (1) United States currency.**
- (2) Wired funds unconditionally held by and irrevocably credited to the escrow account of the closing agent.**
- (3) Certified or cashier's checks that are drawn on an existing account at a:**
 - (A) bank;**
 - (B) savings and loan association;**
 - (C) credit union; or**
 - (D) savings bank;**

chartered under the laws of a state or the United States.

- (4) A check drawn on the trust account of a real estate broker licensed under IC 25-34.1, if the closing agent has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the account on which the check is drawn at the time of disbursement of funds from the closing agent's escrow account.**

(5) A personal check not to exceed five hundred dollars (\$500) per closing.

(6) A check issued by the state, the United States, or a political subdivision of the state or the United States.

(7) A check drawn on the escrow account of another closing agent, if the closing agent in the escrow transaction has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of funds

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from the escrow account of the closing agent in the escrow transaction.

(8) A check issued by a farm credit service authorized under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

Sec. 5. (a) As used in this section, "real estate transaction" refers to any:

- (1) escrow transaction;
- (2) settlement; or
- (3) closing;

conducted in connection with the purchase, sale, or financing of an interest in real estate.

(b) The term does not include a real estate secured loan financing if:

- (1) the only parties to the loan transaction are the lender and the borrower; and
- (2) the lender is responsible for disbursing all of the funds to the borrower or to a third party in order to pay fees and charges associated with the loan transaction.

Sec. 6. Funds received in connection with an escrow transaction must be deposited in an escrow account unless the parties to the escrow transaction agree in writing to another arrangement.

Sec. 7. A closing agent may not make disbursements from an escrow account in connection with a real estate transaction unless any funds that:

- (1) are received from any single party to the real estate transaction; and
- (2) in the aggregate are at least ten thousand dollars (\$10,000);

are wired funds that are unconditionally held by and irrevocably credited to the escrow account of the closing agent.

Sec. 8. A closing agent may not make disbursements from an escrow account in connection with a real estate transaction unless any funds that:

- (1) are received from any single party to the real estate transaction; and
- (2) in the aggregate are less than ten thousand dollars (\$10,000);

are good funds.

Sec. 9. If:

- (1) the closing agent in a real estate transaction receives wired funds unconditionally held and irrevocably credited to the escrow account of the closing agent; and

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1 (2) a holder of a mortgage lien encumbering real estate so
2 requests, as part of written closing instructions or a written
3 payoff statement in advance of closing;
4 the holder of the mortgage lien is entitled to receive its proceeds
5 from the real estate transaction through funds electronically
6 transferred to an account specified by the holder of the mortgage
7 lien.

8 Sec. 10. A closing agent may advance an amount not to exceed
9 five hundred dollars (\$500) from an escrow account on behalf of a
10 party to an escrow transaction for the purpose of paying incidental
11 fees, including conveyance and recording fees. Incidental fees may
12 be paid in order to:

13 (1) effect and close the sale of;
14 (2) purchase;
15 (3) exchange;
16 (4) transfer;
17 (5) encumber; or
18 (6) lease;
19 real property that is the subject of the escrow transaction.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1374, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 6, delete "or accounts".

Page 3, line 15, delete "or accounts".

and when so amended that said bill do pass.

(Reference is to HB 1374 as introduced.)

BARDON, Chair

Committee Vote: yeas 7, nays 0.

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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1374, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 5, after "1." insert "(a)".

Page 1, between lines 7 and 8, begin a new paragraph and insert:

"(b) The term does not include a lender or an employee of a lender that conducts a settlement or closing of a real estate secured loan provided by the lender in the office of the lender."

Page 1, line 9, delete "a federally" and insert "a:".

Page 1, delete line 10.

Page 1, delete lines 14 through 15, begin a new line block indented and insert:

"(4) savings bank;".

Page 1, line 16, after "is" insert **"chartered under the laws of a state or the United States and"**.

Page 2, line 1, after "3." insert "(a)".

Page 2, between lines 7 and 8, begin a new paragraph and insert:

"(b) The term does not include a loan financing if:

(1) the only parties to the loan transaction are the lender and the borrower; and

(2) the lender is responsible for disbursing all of the funds to the borrower or to a third party in order to pay fees and

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charges associated with the loan transaction."

Page 2, line 14, delete "a federally insured:" and insert "**a:**".

Page 2, delete lines 18 through 19, begin a new line double block indented and insert:

"(D) savings bank;

chartered under the laws of a state or the United States."

Page 2, between lines 36 and 37, begin a new line block indented and insert:

"(8) A check issued by a farm credit service authorized under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)."

Page 2, line 37, after "5." insert "**(a)**".

Page 3, between lines 1 and 2, begin a new paragraph and insert:

"(b) The term does not include a real estate secured loan financing if:

(1) the only parties to the loan transaction are the lender and the borrower; and

(2) the lender is responsible for disbursing all of the funds to the borrower or to a third party in order to pay fees and charges associated with the loan transaction."

and when so amended that said bill do pass.

(Reference is to HB 1374 as printed January 27, 2009.)

PAUL, Chairperson

Committee Vote: Yeas 9, Nays 0.

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